CRL.A. NO.1341 OF 2004
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The appellants/ Accused 1 & 2 Viz, Raman (a-1) and seena @ Vijayalakshmi (a-2) were directed to be released on bail by the order of this Court dated 23/03/2006 and made in Crl Mp.No 1393/2006 in CRl.A.No.1341/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.11.2006

Coram

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No.1341 of 2004

1. Ramar
2. Seena @ Vijayalakshmi ... Appellants/Accused 1 & 2

-Vs.-

State by Inspector of Police
Deevattipatti Police Station,
Salem District. ... Respondent/Complainant
(CR.No 560 of 2003)

Appeal Under Sec 374 of CRl.P.C.against the judgment dated 19.10.2004 made in S.C.No.116 of 2004 on the file of the Principal Sessions Judge, Salem.

For Appellants : Mr.R.Srinivasan for
Mr.R.Rajan

For Respondent : Mr.C.T.Selvam,
Additional Public Prosecutor

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J U D G M E N T

(Judgment of the Court was delivered by S.TAMILVANAN,J.)

The convicted accused have preferred this appeal, Challenging the Judgment, dated 19.10.2004, made in S.C.No.116 of 2004 on the file of the Principal Sessions Judge, Salem.

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2. The appellant herein are the accused 1 and 2. The first appellant has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine with default sentence and also convicted under Section 201 IPC and sentenced to undergo Rigorous Imprisonment for 7 years and also to pay fine with default sentence. The second appellant has been convicted under Section 302 r/w 34 IPC and sentenced to undergo imprisonment for life and also to pay fine with default sentence. Against the said conviction and sentence imposed by the learned Sessions Judge, the appeal has been preferred.

3. In order to establish the case, the prosecution has examined as many as 11 witnesses, apart from marking 26 Exhibits and 5 material objects. Neither oral, nor any documentary evidence was let in, at the instance of the appellant herein.

4. The brief facts of the prosecution case are as follows :

(i) On 29.08.2003, while P.W.1, the Village Administrative Officer was in his office at Mookkanoor village, his assistant, P.W.2 came and informed him that the appellants have killed their new born infant female child by administering salt water and buried the body of the infant child. P.W.1 along with P.W.2 went to the scene of crime, where the dead body was buried and found a pit near by a palmirah tree in the land belongs to the appellants and also enquired the villagers about the occurrence, then he went to Deevattipatty police station and gave a complaint, Ex.P.1.

(ii) On receipt of the complaint, P.W.11, the Inspector of Police attached to Deevattipatty Police Station, registered a case in Cr.No.560/03 under Section 302 and 201 IPC against the accused, sent the printed First Information Report, Ex.P.21 to the Judicial Magistrate through a constable and also sent a requisition to P.W.9, the Tahsildar, Omlur Taluk requesting him to conduct inquest on the dead body of the infant child, since the same was buried.

(iii) On receipt of the written request from P.W.11, the Tahsildar, Omlur Taluk, who was examined as P.W.9 went to the scene of occurrence, examined witnesses and recorded their statements. P.W.9 went to the alleged burial place and saw the symptoms for the burial of the dead body of the child. Then, he sent a letter of requisition to the Doctor, P.W.10, for conducting postmortem. P.W.9 had also made arrangements to exhumate the body, which was buried. After exhumation, P.W.10, conducted postmortem on the body of the infant child there itself in the presence of the Tahsildar, P.W.9 and others.

(iv) P.W.11 on information went to the road junction of Chinnathirupathi – Mookanoor, on 30.08.2003 and at about 11 a.m he arrested the first accused in the presence of witnesses P.W.4 and another. The first accused voluntarily gave a confession statement leading to recovery of the material objects. Pursuant to the confession statement,

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P.W.11, recovered M.O.1 to M.O.3 from A1 under the cover of a mahazar, Ex.P.5 in the presence of witnesses. Then, he recovered M.O.4 and M.O.5, the blood stained petticoat and the blood stained saree respectively under mahazar in the presence of witnesses and sent all the material objects to Court under Form 95, which was marked as Ex.P.26.

(v) On 17.10.2003, at about 10.15 a.m, on the information received, P.W.11, went to Mookanoor – Thippireddiyur branch road and arrested the second accused with the help of a women constable and then sent her for judicial custody. He examined all the witnesses and recorded their statements. After completing the investigation, he laid the charge sheet against the first accused under Section 302 and 201 IPC and against the second accused under Section 302 r/w 34 IPC.

5. The incriminating circumstances, that are available in the evidence of the prosecution witnesses, against the appellants, were put to each one of the accused separately under Section 313 Cr.P.C, and while questioning about the same, each one of them denied the incriminating circumstances as false and contrary to facts. No witness was examined and no document was marked at the instance of the appellants / accused.

6. The learned Sessions Judge on considering the oral and documentary evidence and the arguments advanced by both sides, has convicted the accused under the charges framed against them. Accordingly, the first accused was convicted under Section 302 IPC and sentenced him to undergo imprisonment for life and also to pay fine with default sentence and also convicted him under Section 201 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and to pay fine with the default sentence. The second appellant was convicted under Section 302 r/w 34 IPC and sentenced to undergo imprisonment for life and also to pay fine with default sentence.

7. Mr.R.Srinivasan, the learned counsel appearing for the appellants / accused 1 and 2 contended that the prosecution has not established the guilt against the appellants beyond reasonable doubt. According to the learned counsel, the trial court could not have relied on the evidence of P.W.9, the Tahsildar before whom the alleged confession statement was given by the second appellant. Per contra, the learned Additional Public Prosecutor argued that the prosecution has established the guilt against the accused beyond all reasonable doubts. According to him, the conviction of the trial court was based on oral and documentary evidence and that there is no infirmity in the Judgment.

8. As per the evidence of P.W.2, the village assistant, immediately after getting information about the occurrence that the infant female child was done to death by her parents, he went to P.W.1, the Village Administrative Officer and informed the same. P.W.1 on the same date i.e., on 29.08.2003 itself went to the alleged burial land and after verifying the symptoms found there in, went to Deevattipatty police station and

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lodged the written complaint, Ex.P.1. The inspector attached to the said police station was examined as P.W.11. On receipt of the complaint, the case was registered in Cr.No.560/03 under Section 302 and 201 IPC and the printed First Information Report, Ex.P.21 was sent to the Judicial Magistrate and that there is no delay in sending the First Information Report to court. As exhumation was needed, he sent intimation to the Tahsildar, Omlur Taluk. On receipt of the said intimation, P.W.9, Tahsildar, Omlur Taluk went to Mookkanoor village and inspected the alleged place of burial of the infant child in the presence of the Village Administrative Officer and other officials and he recorded the statement of the witnesses, which were marked as Exs.P.10 to P.16. He had also sent a written requisition to Government Hospital for conducting postmortem. As it was 10.30 p.m, the body of the infant child could not be exhumed, then, on the next day, again he visited the scene of crime at about 9 a.m. The dead body of the infant child was taken out by exhumation and then P.W.10, Dr.Vallinayagam, Professor, Forensic Medicine Department, Government Hospital, Salem, conducted postmortem at the place of exhumation in the presence of the Tahsildar. The Doctor who conducted the postmortem has found the following symptoms on the dead body of the infant female child :

" Injuries :-
1. A contusion present on Left frontal region of scalp 7 cm x 4 cm x 0.5 cm. Dart red. Sub-dural and Sub-arachnoid hemorrhage present over both cerebral hemispheres (Antemortem injuries).

Other findings :-
Pleural cavities - Empty
Peritoneal cavity - Empty. No fracture ribs.
Liver, Spleen, Kidneys - congested.
Hyoid Bone - Intact
Stomach - 5 ml greyish yellow, chyme present. No smell, Mucosa - congested.
Uterus - Infertile.
Intestines - Normal.
Opinion :-
Died of Head Injuries

Time of Death : -
2 - 3 days prior to postmortem examination."

The Doctor, who conducted the postmortem opined that the death was caused due to the Head Injuries and the viscera was sent for chemical analysis. The Viscera Report received from the Forensic Department received by the Court was marked as Ex.P.19. The final opinion was given by the doctor, based on the viscera report, marked as Ex.P.20. The medical witness has given his final opinion that the infant child died with head injuries, due to administering of sodium chloride poisoning.

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9. The complainant, P.W.1 has clearly deposed about the complaint, Ex.P.1, given by him before the police and P.W.2 has given corroborative evidence. P.W.3, the alleged witness for observation mahazar turned hostile. P.W.4, the Revenue Inspector attached to Omlur Taluk, Semmandapatty, was one of the witnesses for the exhumation of the dead body of the infant child and he was also a witness for the arrest of the first accused and the admissible portion of the confession statement, Ex.P.4 given by the first appellant. Pursuant to the confession statement, the Inspector attached to the said police station took the first appellant and the witnesses to a rocky place at Thipireddiyur. There, the first appellant is said to have taken out a Stainless steel tumbler (Eversilver glass) , M.O.1, Wirebag, M.O.2 and Spade, M.O.3, which were hidden below a rocky portion. The same was recovered under mahazar, Ex.P.5 in the presence of witnesses.

10. P.W.4 would state that he was one of the witnesses to the confession statement given by A1 recorded by P.W.11 and that the M.O.1 to M.O.3 were recovered from A1 in the presence of himself and another under Ex.P.5. P.W.5 turned hostile. P.W.6, is the photographer, who took photographs at the burial place as well as the residence of the appellant on 29.08.2003, the photo copies were marked as Ex.P.6 series and the negatives as Ex.P.7. P.W.7, the midwife of Kondalampatty village has deposed that she used to check up the pregnant ladies and that the second accused, while she was in seven month pregnancy came for check up and subsequently, according to her, the second accused did not turn up for regular check up. P.W.8 turned hostile and deposed that he did not know anything about the appellants, though he was also residing in the same village and in the same street.

11. As contended by the learned Additional Public Prosecutor, even in Ex.P1, the complaint given by P.W.1, the Village Administrative Officer, who set the law in motion, has clearly stated that he came to know that the infant female child was done to death by administering sodium chloride poisoning. A2 has admitted in her confession statement, Ex.P8, recorded by the Tahsildar, P.W.9, a Public Officer, that the infant female child was delivered by her on 26.08.2003 and that the child was done to death by administering sodium chloride water by her and her husband, A1. As they have two more female children apart from one male child, considering the difficulty in bringing up the infant female child, according to A2, both have decided to kill the female child. As per her confession statement of A2, the appellants have administered sodium chloride water to the one day born child, thereafter, within half an hour, the child died. Then, the dead body of the child was covered by a saree, put in a wire bag, and taken to their agricultural land by TVS 50 motor cycle, where A1, dug a pit and the dead body of the infant child was buried by both of them. The evidence of P.W.4, P.W.9 and P.W.10 corroborated by P.W.1 and P.W.2 would establish that the dead body of the infant child was exhumed at the place as stated by A2 in her confession statement.

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12. As found by the court below, the evidence of the Doctor, P.W.10, the postmortem certificate, Ex.P.18, Viscera Report, Ex.P.19 and Final Opinion, Ex.P.20 would clearly establish that the infant child was done to death by administering sodium chloride poisoning. The evidence of P.W.9, Tahsildar of Omlur and his report, Ex.P.17 with the other supporting documents and the other corroborative evidence would clearly establish that the dead body of the infant child was exhumed from the earth, as confessed by the second appellant / A2.

13. As per the prosecution case, the appellants administer sodium chloride water to the one day born female child and thereby murdered the infant child, since they had three more children, including two other female children.

14. The learned counsel appearing for the appellants contended that the injury found on the head of the dead body of the child was not caused by the appellants, but as the second appellant had frequent child birth, due to the pressure given by her, while passing motion, the child came out from the womb and fallen down in a rocky portion and thereby it caused head injury. The aforesaid defence raised by the learned counsel for the appellants was rightly disbelieved by the trial court. The final opinion of the doctor, based on viscera report is that the child was done to death by administering sodium chloride poisoning. The learned counsel for the appellants further contended that except the confession statement given by the second appellant before the Tahsildar, there is no other evidence to convict the appellants. According to him, even the alleged confession statement cannot be relied upon for convicting the accused.

15. The evidence of the Tahsildar, P.W.9 and his report, Ex.P.17, corroborated by the evidence of the other witnesses discussed above would be sufficient to establish that the second appellant / A2 had voluntarily gave the confession statement before the Tahsildar, Omlur Taluk, which is supported by medical evidence. Therefore, we are of the considered view that the extra judicial confession given by the second appellant / A2 before the Tahsildar, a public officer, corroborated by the other circumstantial evidence, supported by medical evidence, would be sufficient to establish the guilt against the second appellant / A2 beyond all reasonable doubts.

16. Prevention of infanticide, especially the female infanticide is the object of the state, based on the policy of the Government. If it was difficult for the appellants to maintain the female child, they could have handed over the same to any orphanage or service organisation, instead of committing infanticide, which is highly condemnable. Therefore, we are of the considered view that the guilt against the second appellant has been proved, so as to punish her under Section 302 IPC.

17. As far as the first appellant is concerned, the learned counsel for the appellant contended that the confession statement given by the

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second accused, being the co-accused, does not bind the first appellant, though the first appellant is only the husband of the second appellant. In support of his contention, the learned counsel cited the decision in Param Hans Yadav & Sadanand Tripathi v. State of Bihar & others reported in 1987 LW (crl) 275, wherein the Honourable Apex Court has held at page number 277 as follows :

> " 9. It is well settled that the confession of a co-accused is not substantive evidence against other co-accused persons in the same trial. As this Court pointed out in Kashmira Singh v. State of Madhya Pradesh 1952 S.C.R 526, the confession of a co-accused is not substantive evidence against the other accused persons at the trial but could only be used for lending re-assurance if there be any other substantive evidence to be utilised or acted upon."

18. The learned counsel drew our attention to the prosecution evidence on record. P.W.1, the Village Administrative Officer, on the information given by P.W.2 gave the complaint, Ex.P.1 before P.W.11. P.W.3, P.W.5 and P.W.8 turned hostile, and their evidence does not support the prosecution case. Therefore, the only evidence available against the first appellant is the admissible portion of the confession statement given by him, which was marked as Ex.P.4, recorded in the presence of the witnesses. As per the prosecution case, pursuant to the admissible portion of the confession statement, the first appellant was taken to the place stated by him and he handed over the M.O.1 to M.O.3, namely Stainless steel Tumbler (Eversilver glass), wirebag and a spade. The learned counsel for the appellant, contended that it is highly improbable for the first appellant to hide M.O.1 to M.O.3 beneath the rocky portion as stated by the prosecution. According to the learned counsel for the appellants, the evidence on record is not sufficient to establish the guilt against the first appellant. As the confession statement given by the co-accused is not a substantive evidence, there is no sufficient evidence available to base the conviction on the first appellant.

19. Therefore, we are of the considered view, in the light of the decision referred above, that the confession statement given by the co-accused, namely the second accused, in the absence of corroboration, would not bind the other accused, namely the first appellant. Therefore, we hold that the case against the first appellant has not been proved by the prosecution beyond all reasonable doubts and accordingly, benefit of doubt is given to the first appellant and find it reasonable to acquit the first appellant.

20. In the result, the appeal, so far as it relates to the first appellant is allowed and accordingly, the conviction and sentence imposed on him by the trial court is set aside and he is acquitted of the charges under Section 302 and 201 IPC and the fine amount paid by him is ordered to be refunded. The appeal, so far as it relates to the second

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appellant is dismissed, confirming the conviction and sentence imposed on the second appellant, but modified her conviction under Section 302 IPC, instead of Section 302 r/w 34 IPC with the same sentence and fine amount as imposed by the sessions court. If the second appellant is on bail, the court below shall take immediate steps to secure the second appellant / A2 to undergo the remaining period of the sentence imposed by the court below. The appeal is disposed of accordingly.

tsvn

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge,
   Salem.

2. The District Munsif cum Judicial Magistrate
   Omlur, Salem District.

3. -do- thro' The Chief Judicial Magistrate,
   Salem.

4. The District Collector,
   Salem.

5. The Director General of Police.
   Chennai.

6. The Public Prosecutor,
   High Court, Madras.

7. The Superintendent
   Central Prison, Coimbatore

8. The Superintendent,
   Special Prison for women, Salem

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9. The Inspector of Police,
Deevattipatty Police Station,
Salem District.

+ One cc to Mr. R Rajan Advocate SR 52409.

NG (co)
sg 29/11/06

Crl.A.No.1341 of 2004

04.11.2006

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